

GENERAL ASSEMBLY OF NORTH CAROLINA

Fourth Extra Session 2016

Legislative Fiscal Note

BILL NUMBER: House Bill 17 (Second Edition)

SHORT TITLE: Modify Certain Appts/Employment.

SPONSOR(S): Representatives Lewis, Bryan, Horn, and Ross

FISCAL IMPACT					
(\$ in thousands)					
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> No Estimate Available					
State Impact	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
General Fund					
Dept. of Public Safety Revenues:	(\$34,500)	(\$69,006)	(\$69,006)	(\$69,006)	(\$69,006)
Dept. of Public Safety Expenditures:	(\$304,850)	(\$609,701)	(\$609,701)	(\$609,701)	(\$609,701)
DPS State Positions:	-7.0	-7.0	-7.0	-7.0	-7.0
Dept. of Public Instruction Revenues:	\$34,500	\$69,006	\$69,006	\$69,006	\$69,006
Dept. of Public Instruction Expenditures:	\$304,850	\$609,701	\$609,701	\$609,701	\$609,701
DPI State Positions:	7.0	7.0	7.0	7.0	7.0
NET STATE IMPACT	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
 Part I (Sections 1-30) - State Board of Education and Department of Public Instruction, Section 7 - all Cabinet and Council of State agencies
 Part II - 17 constituent institutions of the University of North Carolina,
 Part III - Cabinet agencies and the Senate of the North Carolina General Assembly
 Part IV - Departments of Public Safety and Public Instruction

EFFECTIVE DATE: Sections 1-6 and Sections 8-32 become effective January 1, 2017. The remaining sections become effective when it becomes law.

TECHNICAL CONSIDERATIONS:
 None

BILL SUMMARY: House Bill 17 makes various changes to the laws pertaining to the Superintendent of Public Instruction; the appointments process for the boards of trustees for the constituent institutions of The University of North Carolina; the appointments of heads of principal State departments; and transfers the Center for Safer Schools to the Department of Public Instruction.¹

ASSUMPTIONS AND METHODOLOGY:

PART I. Clarify Roles/DPI/SBE

The Proposed Committee Substitute makes the following changes.

Section 1 makes the following changes:

- Authorizes the Superintendent of Public Instruction (Superintendent) instead of the Governor to appoint the student advisors and local superintendent advisor to the SBE.

¹ Bill summary and section summaries prepared by committee counsel.

- Adds an additional provision to require the Superintendent to provide technical assistance and administrative assistance, including staff, to the SBE through the Department of Public Instruction (DPI).

Section 31 provides that the current advisors in these positions can serve the remainder of their terms.

Section 2 adds language to clarify that the Superintendent, through DPI, must administer all needed rules and regulations adopted by the SBE.

Section 3 removes language subordinating the Superintendent to the SBE, and instead adds language that the Superintendent is an elected officer and Council of State member and is the administrative head of DPI.

Section 4 does the following:

- Removes any references to the Superintendent's powers and duties being subject to the SBE.
- Adds authority to the State Superintendent to administer DPI's funds and enter contracts for the operation of DPI.
- Establishes that all staff of DPI, including those supporting the SBE, are under the management of the Superintendent.
- Provides that the Superintendent, rather than SBE, will administer any special funds within DPI which were received as grants from nongovernmental sources in accordance with G.S. 115C-410.
- Adds new language that all matters related to providing staff services and support to the SBE, including implementation of federal programs on behalf of the SBE, are under the direction and control of the Superintendent.
- Specifies that as secretary to the SBE, the Superintendent must administer funds appropriated for the operations of the SBE and for aid to local school administrative units.

Section 5 adds that the Superintendent shall administer any available educational funds through DPI in accordance with all rules and regulations adopted by the SBE.

Section 6 amends the statute to provide that the SBE is authorized to adopt all needed rules and regulations for the creation and administration of special funds within DPI to manage any funds received as grants from nongovernmental sources in support of public education. It then provides that, in accordance with the SBE's rules and regulations, the Superintendent is authorized to create and administer such special funds, to accept gifts and grants, and use those gifts and grants or reallocate those funds to the local school administrative units.

Section 7 amends G.S. 126-5(d) as follows:

- Decreases from 1500 to 300 the number of positions the Governor may designate as exempt throughout the Cabinet departments and offices.
- Removes the Office of State Budget and Management and the Office of State Human Resources from the list of cabinet departments and offices with exempt positions designated under this subsection.

- Increases the number of positions the Secretary of State, the Auditor, the Treasurer, the Attorney General, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate as exempt to:
 - 25 exempt policymaking positions, or 2% of the total number of full-time positions, whichever is greater, and
 - 25 exempt managerial positions, or 2% of the total number of full-time positions in the department, whichever is greater.
- Increases the number of positions the State Board of Education may designate as exempt to:
 - 70 exempt policymaking positions, or 2% of the total number of full-time positions, whichever is greater, and
 - 70 exempt managerial positions, or 2% of the total number of full-time positions in the department, whichever is greater.
- Provides that if a position in a Cabinet agency is designated as exempt from the NCHRA under this subsection is changed to subject to the NCHRA and the employee occupying the position has been continuously employed in a permanent position for the immediate 12 preceding months, the employee is deemed a career State employee, as defined in G.S.126-1.1(a), upon the effective date of the change in designation.

This section becomes effective when it becomes law.

Section 8 provides that the Superintendent will designate exempt positions, rather than the SBE, beginning January 1, 2017.

Section 9 changes the designation of the head of DPI from the SBE to the Superintendent.

Section 10-12 provide that the Superintendent will be the head of DPI and have all the powers and duties conferred by the Constitution, the various statutes, and delegated to the Superintendent by the Governor and SBE.

Section 13 repeals subsection (d6) of G.S. 14-234 which generally prohibits public officers and employees who are involved in the making or administration of a contract from deriving a direct benefit from the contract. Subsection (d6) of that statute exempts employment contracts between the SBE and its chief executive officer.

Sections 14 & 15 place the Achievement School District (ASD) under the administration of the SBE and the Superintendent. In addition, the ASD Superintendent Selection Advisory Committee is repealed. The Superintendent would select the ASD superintendent who would serve at the pleasure of the Superintendent. The salary of the ASD superintendent would be established by the Superintendent rather than the SBE and reporting would be directly to the Superintendent as well.

Section 16 clarifies that the Superintendent, through DPI, is responsible for the administration, appointment of staff, and oversight of these schools.

Section 17-18 and 32: Sections 17-18 remove the Governor's appointing authority to the Advisory Board and gives the House of Representatives, the Senate, and the SBE each 1 additional member to appoint. It also removes the SBE Chair's authority to appoint a member of the State Board to serve a nonvoting member of the Advisory Board.

The Advisory Board would annually elect the chair of the Advisory Board from among its membership.

These sections remove language that provide that the Office of Charter Schools would be "subject to the supervision, direction, and control" of the SBE. The executive director would be appointed by the Superintendent who would also set the salary. The executive director of the Office of Charter Schools would report to and serve at the pleasure of the Superintendent rather than the SBE.

Finally, these sections add the Superintendent to the list of entities that are protected from any civil liability for any acts or omissions of a charter school.

Section 32 provides that the current members of the Advisory Board can serve the remainder of their terms.

Sections 19-23 and 26-27 make conforming changes to add the Superintendent to the list of entities that cannot be held liable for negligence for actions in the following areas: criminal history checks, personnel evaluations, and use of reasonable force.

Section 24 provides that the School Planning Division is a part of DPI rather than the SBE.

Section 25 section places the Superintendent in charge of the system of insurance for public school property, which is to be done in accordance with rules and regulations adopted by the SBE. The Superintendent is to employ the personnel rather than the SBE.

Section 28 changes the 2015 Appropriations Act by providing that DPI must implement budget reductions and provide an organizational chart rather than the SBE. The Superintendent would not need approval from the SBE to make position reductions but must still follow any rules and regulations from the SBE relating to funds and programs administered by DPI that could be impacted by funding reductions.

Section 29 requires the SBE must revise any rules and regulations to comply with this legislation by May 15, 2017.

Section 30 requires DPI to review State laws, rules, and regulations to ensure compliance with the intent of this legislation and to report to the General Assembly by April 15, 2017 on the results of its review.

Part I Fiscal impact: Sections 1-32 make a number of changes to the laws pertaining to the Superintendent of Public Instruction, none of these changes have a fiscal impact including section 7 which also affects Cabinet and Council of State agencies'. Section 7 modifies exempt designation authority amongst the executive branch and provides career status to certain employees who would not have otherwise had protections under the State Human Resources Act, the bill does not create or eliminate any positions. Designating employees as exempt or subject to the State Human Resources Act and providing career status to certain employees do not have a direct fiscal impact.

PART II. Modify Appointments of UNC Boards of Trustees

Section 35 of this bill rewrites G.S. 116-31, the statute delineating the composition and appointment of the boards of trustees at each of the constituent institutions of the University of North Carolina system. In the existing statute, the boards of trustees at each institution are composed of thirteen individuals: eight appointed by the Board of Governors, four by the

Governor, and the president of the student government. The statute as amended eliminates the Governor's four appointments and creates four appointments by the NCGA (two upon the recommendation of the President Pro Tempore of the Senate and two upon the recommendation of the Speaker of the House of Representatives).

Section 36 of this bill rewrites G.S. 116-233, the statute delineating the composition and appointment of the board of trustees at the North Carolina School of Science and Mathematics. Previously, of a board of up to thirty members, the Governor had the authority to appoint two. This section eliminates the Governor's appointments and increases the appointments made by the President Pro Tempore and the Speaker of the House of Representatives from two members of the board to three each.

Section 37 of this bill specifies the effective date and how it applies to vacancy and expiring appointments.

Part II Fiscal Impact: These sections as written are not anticipated to have a fiscal impact.

PART III. Senate Confirmation of Cabinet Appointees

Section 38 would require the Governor to notify the Senate of the name of each person nominated to be the head of a principal State department, and the appointment would be subject to the advice and consent of the Senate unless one of the following occurs:

- The senatorial advice and consent is expressly waived by an enactment of the General Assembly.
- A vacancy occurs when the General Assembly is not in regular session. Any person appointed when the General Assembly is not in regular session may serve without senatorial advice and consent for no longer than the earlier of the following:
- The date the Senate adopts a simple resolution specifically disapproving the person appointed.
- The date the General Assembly adjourns by joint resolution for a period of longer than 30 days without adoption by the Senate of a simple resolution approving that person.

Part III Fiscal Impact: This section as written is not anticipated to have a fiscal impact.

PART IV. Establish Task Force for Safer Schools; Transfer Center for Safer Schools

Section 41 transfers the Center for Safer Schools from the Department of Public Safety (DPS) to the Department of Public Instruction (DPI) as a Type I transfer effective December 15, 2016. It also amends Chapter 115C to establish the Task Force for Safer Schools, including the composition of task force, appointments of the Chair and Vice-Chair and the terms of the members.

Part IV Fiscal Impact: This section has no net fiscal impact to the State. Funding, including staff, for the Center will be transferred from DPS to DPI to support the Task Force. When annualized, total funds and positions transferred will be \$678,707 and 7 staff.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

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Signed Copy Located in the NCGA Principal Clerk's Offices